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NEW YORK NY 10023

In re Application of
Motoyuki Fujimori
Application No. 09/912,070
Filed: July 24, 2001
Attorney Docket No. U 013566-9

ON PETITION **COPY MAILED**

AUG 30 2006

OFFICE OF PETITIONS

This is a decision on the petition filed May 6, 2003, to withdraw the holding of abandonment of the above-identified application, which is treated under 37 CFR 1.181.

The petition is DISMISSED.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181," or, as explained in more detail below, "...under 37 CFR 1.137(a)" or (b). This is not a final agency decision.

The above-referenced application was held abandoned on March 6, 2003, for failure to file drawing corrections required by a Final Office Action mailed December 5, 2002. The Office Action set a three (3)-month statutory period for reply. Accordingly, a Notice of Abandonment was mailed April 23, 2003.

Petitioner contends that 1) the period for response did not lapse until June 5, 2003 and 2) the Examiner was not clear in the Final Office Action regarding the drawings requirements to allow petitioner to therefore file a proper response.

In response to the Final Office Action, an amendment and a two month extension of time were filed on April 9, 2003. The extension of time however, only extended the time for response from March 6, 2003 to May 6, 2003, not to June 5, 2003 and as noted in the Notice of Abandonment, the response did not include proper drawing corrections. Thus, the amendment filed April 9, 2003 was not responsive to the Office Action and the application was appropriately abandoned.

With respect to the language or terminology used in the Office Action regarding the drawings, petitioner could have responded to the drawing requirements prior to the abandonment of the application and therefore could have avoided the abandonment. In view thereof, the holding of abandonment will not be withdrawn and the notice of abandonment will not be vacated.

Petitioner may wish to file a petition to revive under 37 CFR 1.137(a) or (b). Section 1.137(b) now provides that where the delay in reply was unintentional, a petition may be

filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof;
- (2) the petition fee as set forth in 37 CFR 1.17(m) (\$675.00);
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and
- (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).


The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is written in a cursive, flowing style.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions